DETAILED ACTION

Claim Objections

1. Claim 33 is objected to because of the following informalities: claim 33 appears to be exactly the same as claim 31. Appropriate correction is required.

Specification

2. The disclosure is objected to because of the following informalities: on page 8 line 25 "30" should be "20" and on page 9 line 10 "real" should be "rear".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites "at least one internal cavity" however this element has been recited in claim 29, from which claim 30 depends.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 2, 4-7, 13-16, 18-21, 27, 28, 31-36, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. WO 99/45326.

7. Hess teaches a simulated fuel element for a fuel effect fire comprising a body of rigid substantially non-transparent material shaped and colored to resemble a real wood (rough, non-planar) logs, 22 (Figures 1 and 2). Logs 22 a preferably formed from polystyrene and are colored to resemble wood logs. Hess does not specifically state that the logs are dark colored, however dark colored logs are old and well known and it would have been obvious to a person having ordinary skill in the art to make the logs dark colored (specifically black or dark brown) if they are intended to resemble wood logs.

8. Hess also teaches reflective portions 34 coated on the exterior portion of the logs (Figure 2) which reflect light from source 30.

9. The logs are placed on a fuel bed including ember bed 24 (Figure 2).

10. Regarding claims 27 and 28, Hess does not teach transparent areas in the ember bed. Hess teaches translucent areas 28 that may be colored (page 3 lines 18-24). It would have been obvious to a person having ordinary skill in the art to utilize transparent areas instead of translucent areas if it is desired to permit the passage of even more light.

11. Regarding claims 35 and 36, Hess also teaches screen 16 mounted behind the fuel bed and reflectors that face the screen (Figure 2).

12. Claims 8-12, 22-26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. in view of Zei et al. US #1,432,942.

13. Hess does not teach crevices or fissures in the fuel elements, however this is well known in the art as shown by Zei. Zei teaches fuel element 10 (Figure 1) including fissures 19 extending from the interior of the lag to the exterior. The logs are made to resemble real logs and therefore are dark colored. An internal cavity contains light source 14 and has opening 11 which is not visible when the fuel element is in its intended use position. The logs simulate incandescence when the light source is illuminated (lines 69-84) giving the appearance of being partly translucent.

14. It would have been obvious to one of ordinary skill to utilize such logs in the assembly of Hess so as to provide a more realistic looking fire.

15. Zei does not teach the cut out portion as terminating in a crevice, however this is considered to be an obvious alternative to the fissures shown. It would have been obvious to one of ordinary skill to utilize opening appropriate for creating the desired lighting effect.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patent 1827941 is cited as of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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